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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

Nos. 287, 288, 289, 290 and 316

No. 287 CAMILLE V. TREIGLE, Appellant, v. ACME HOMESTEAD ASSOCIATION, Appellee.

No. 288 CAMILLE V. TREIGLE, Appellant, v. THRIFT HOMESTEAD ASSOCIATION, Appellee.

No. 289 TREIGLE SASH FACTORY, INC., Appellant, v. CONSERVATIVE HOMESTEAD ASSOCIATION, Appellee.

No. 290 TREIGLE SASH FACTORY, INC., Appellant, v. UNION HOMESTEAD ASSOCIATION, Appellee.

No. 316 JOSEPH MITCHELL, Appellant, v. CONSERVATIVE HOMESTEAD ASSOCIATION, Appellee.

PETITION OF APPELLEES FOR REHEARING.

DELVAILLE H. THEARD,
LOUIS H. YARRUT,
HARRY EMMET McENERNY,
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Come now the Acme Homestead Association, Thrift Homestead Association, Union Homestead Association, and Conservative Homestead Association, appellees in the above entitled causes, and present this, their petition for rehearing, and in support thereof, respectfully show:

In holding that the challenged sections of the 1932 statute are illegal, because this Court considers that they deal only with the private internal rights of building and loan shareholders and were enacted without regard to any

discernible public purpose, this Honorable Court has mistaken the true character of the rights of the members of these associations (exactly analogous to the depositors in mutual savings banks) and the objective and public purpose of the legislation under consideration.

Rights of All Building and Loan Shareholders Being At All Times Fundamentally Mutual, No Preferential Right Acquired By Applicant for Withdrawal, Who Remains At All Times a Shareholder.

The decision in this case is erroneous in holding that the new statute changing the method of withdrawal deprives an applicant for withdrawal of any preferential rights.

When we consider that the cardinal principle of building and loan associations is mutuality, and that there is no device known to the law of Louisiana through which a member in such a mutual association can ever obtain a preference over any other member, it is clear that the 1916 Louisiana statute providing for the payment of withdrawal applications in the order of filing, in effect only indicated the order of payment which the legislature then considered proper, and did not create, and never was intended to create, any new or preferential right in favor of any applicant over and against the other members of the association.

The status of the applicant as a shareholder did not change merely because he indicated his intention to withdraw from the association; and, as long as his application

was unpaid, he remained a shareholder, like all other shareholders, his status like theirs being at all times subject to regulation and control under the continuing police power of the State.

The legislature in providing at a later date for certain changes in the order and method of payment of withdrawal applications, did not, therefore, affect any special property right of the applicant; for the only difference between the applicant and the other shareholders, was that he desired to withdraw while they were willing to continue their membership, at all times identical, in the association.

As the plaintiffs on the withdrawal list were at all times shareholders and enjoyed no special or accrued rights on that account, they cannot complain that the new statute has deprived them of any property.

It must be remembered that all the associations now before the court are solvent, going concerns; and that the changes in method and order of payment, as will be hereinafter shown, are essentially mutual, fundamentally conform to the basic attributes of building and loan, and deprive the applicants of no property rights.

No Private Shareholders' Rights in Building and Loan Associations.

Building and loan associations have no private shareholders, but, like mutual savings banks and mutual life insurance companies, are owned by the members of the public who invest in them; and this creates a quasi-public relation-

ship at all times subject to police power regulation and control.

The decision in these cases is erroneous in that it is based on the mistaken idea that the statute under attack relates to the rights of private stockholders in their relationship *inter sese;* whereas, the truth is that building and loan associations, exactly like mutual savings banks and mutual life insurance companies, are strictly public institutions, with no private stockholders whatsoever.

No one will deny that mutual savings banks and other similar institutions are quasi-public, and that the rights of their depositors or members are always matters of public concern, affected with a public interest, and subject to regulation through a reasonable exercise of the police power.

These principles should suffice to sustain the validity of the statutes here under attack; for in the discharge of its obligations to protect the investments of the public in these institutions, the State is under the duty of enacting proper and reasonable laws, not only as to the manner in which the funds of the members shall be administered and protected, but also as to the method of withdrawing these funds; it being essential in the public interest that such withdrawals be effectuated only in the manner least disturbing and hurtful to the normal functioning and continued existence of these State instrumentalities.

The Sections Under Attack Constituted a Reasonable Exercise of the Police Power for a Proper Public Purpose.

There was an obvious public purpose in the 1932 Louisiana legislation relaxing the rigid 1916 provisions as to the use of certain funds for the payment of withdrawals, by the substitution of a new rule which gave discretion to the directors so as to conserve the general resources and increase the cash reserves of individual associations. The associations, thus enabled to use if necessary the whole of their cash receipts for primary corporate needs and obligations, were indubitably strengthened as business units and made better able to withstand adverse economic conditions. In thus protecting each building and loan unit, the Legislature was obviously working for the ultimate protection, safety and payment of the investment of each individual member of such unit.

It would be most regrettable if the sections under attack are to be stricken down by the decision in these cases; for the value and public purpose of this new legislation have already been demonstrated by actual experience in Louisiana, where these sections have been in actual operation for more than three years. The fact that numerous building and loan associations in Louisiana, which were in distress before this legislation became effective, have now successfully passed through the depression, and that the investments in thirty-nine of these Louisiana institutions are now insured by The Federal Savings and Loan Insurance Corporation (an agency of the United States Government) is due entirely to the 1932 statute, which made it possible

for these associations to conserve their resources and to create reserves as provided by the new statute, with the gratifying result that the shares of every investor in these insured associations is now worth one hundred cents on the dollar and is now withdrawable on demand.

If a further test of the reasonableness and public purpose of these sections is needed, it will be found in the fact that, out of approximately one hundred seventy-five thousand shareholders in these associations in the State of Louisiana, only eight of them ever objected to these new laws and brought suits to attack them.

Finally, the reasonableness and propriety of this new building and loan legislation is most persuasively suggested by reference to numerous recent legislative enactments of other States indicating that these other States undertook to solve their building and loan problems by statutes closely resembling in many respects the provisions of the Louisiana 1932 Act. This legislation from other States clearly indicates that there is nothing capricious or arbitrary in the provisions of the Louisiana statute, but that the Louisiana statute approaches, if indeed it does not exactly reflect, the norm of legislation considered to be appropriate as a solvent for current building and loan needs. This evidence is ample to sustain the validity of the Louisiana statute as a reasonable and proper exercise of the police power, enacted for a well defined and discernible public purpose.

There is likewise a clear public purpose in those provisions of the 1932 statute which formulate a new method of paying withdrawals. The Legislature realized that

many thousands of distressed citizens were trying unsuccessfully to withdraw their funds from building and loan associations, which were unable to meet these demands in full.

No one would question the right of the Legislature to provide for partial payments of deposits in mutual savings banks, when economic conditions were such as to make it impossible for these banks, although solvent, to pay their depositors in full.

Exactly the same principle is applicable to building and loan associations. To avert widespread distress, the Legislature modified the existing statute by formulating a new form of payment according to which, in any association, out of the amount of funds at that time available for the payment of withdrawals, a larger number of applicants could be paid, at least in part, and each for a substantial amount.

This Honorable Court is in error in characterizing this new rule as an attempt to change the private rights of association shareholders as such. The error of the Court's view, lies in the failure to realize that there are no private rights, and no shareholders in the usual sense of that term, in mutual building and loan associations; and that their so-called shareholders are the members of the public who (exactly as depositors in mutual savings banks) have created, by their investment on a mutual basis in these associations, a common fund for the making of home loans.

A doctrine which would deny to the Legislature the right of regulating the relationship of millions of this type

of investors in quasi-public institutions would be a most dangerous one; for it would overlook the interest of the public in these institutions. If the Legislature is denied the right to control the relationship of the members in mutual building and loan associations, then it can not assert the right to regulate the substantially similar relationship of depositors in mutual savings banks.

This doctrine has so surprised the supervising authorities who with the Legislatures have for so many years wisely controlled member-and depositor-relationships in these quasi-public institutions in the several States, that many of the State Supervisors and Commissioners have advised us that they will, through the respective Attorneys General of their States, join with the present petitioners in asking for a rehearing, to the end that the error of this Court in classifying, as a private relationship, the deposits and memberships in mutual savings banks and in mutual building and loan associations in this country may be corrected.

The Sections Under Attack Constitute Emergency Legislation, and Should Be Sustained as Such.

The opinion indicates that these sections might have been sustained if they had been, by their text, limited to a period of emergency and been temporary and conditional.

It is true that the sections are not limited to any definite period and are not in terms characterized as emergency legislation.

But inherently and in substance these sections, applicable only when associations are in a frozen or precarious financial condition, constitute emergency legislation strictly, and manifestly they prescribe the special rules to be applied to associations during the indicated periods of stress.

No matter what may be the reason for the delay, when an association is unable to pay withdrawals within the normal sixty day period fixed by the Statute, the suspicions and anxieties resulting from its inability to pay off its investors within a reasonable time create a condition of real emergency and crisis. The sections under attack apply precisely and only to these periods of stress and emergency, and are in reality emergency provisions; and, so treated and considered by the Court, the validity of these sections should have been sustained as a proper exercise of the police power.

The Decision Will Make It Impossible for Many Mutual Building and Loan Associations to Continue in Business.

The decision herein will mean the liquidation of many solvent building and loan associations.

Under the decision the rights of individual members in any one association must be fixed by the statute in force at the date when the individuals joined the association.

Where during the existence of an association, a Legislature has passed several different statutes, it becomes a physical impossibility for that association to observe the

several, and necessarily different, statutes applicable to its several members. If different rules under different statutes must be contemporaneously observed in any one association as to allocation of funds, and especially if different statutory provisions must be complied with at the same time in each association as to the method of paying withdrawals, so that each member will be accorded the benefit of the particular statutory privileges in force when his membership in the association started, there must inevitably result a condition, not only indescribably confusing, but impossible of practical achievement or realization.

Thus in Louisiana, every association having a withdrawal list will be under the duty of trying to enforce the different rules prescribed by the three Louisiana statutes; and, notwithstanding the cardinal principle of mutual associations that the rights of all the members are identical and that all funds are commingled and administered for their equal benefit, the Louisiana associations will be under the duty of trying to set up three varying systems of bookkeeping and three different plans of withdrawal, in order to preserve the three types of privileges which, the Court says, are each immutable and must be considered as continuing to exist as of the date when each member joined the association either under the law of 1902, or the law of 1916, or the law of 1932.

It is perfectly evident that this would not be a workable plan, and since these associations could not refuse to observe the law, they would be compelled to go out of business.

In fact, unless the Legislature can retroactively regulate existing membership rights, no association can ever survive any basic change made in a regulatory statute; and therefore every time the Legislature enacts a basic amendment to the State building and loan statute, every association in that State will have to liquidate.

For the foregoing reasons, it is respectfully urged that this petition for rehearing be granted, and that the judgment of the Supreme Court of Louisiana in the above entitled causes be, upon further consideration, affirmed.

Respectfully submitted,

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We, the undersigned, of counsel for the above appellees, petitioners for rehearing, do hereby certify that the foregoing petition for a rehearing of the above entitled causes is presented in good faith and not for delay.

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